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OFFICE OF PETITIONS

In re Patent No. 7,829,682

Elliot, et al.

Issue Date: November 9, 2010

Application No. 10/554,917

Filed: April 27, 2007

Attorney Docket No. 039386-2277

DECISION FOR REQUEST
FOR RECONSIDERATION
OF PATENT TERM
ADJUSTMENT

This is a decision on the "Request for Reconsideration of Patent Term Adjustment for Patent under 37 CFR 1.705(d)," filed January 7, 2011. Patentees request that the patent term adjustment indicated on the face of the Letters of Patent be corrected from seven hundred and sixty-three (763) days, to eight hundred and fifty-three (853) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

On November 9, 2010, the above-identified application matured into U.S. Patent No. 7,829,682, with a revised patent term of 763 days. The instant petition was filed on January 7, 2011. Patentees set forth no specific argument for the requested adjustment in the patent term, but conclude that the patent term should be adjusted by eight hundred and fifty-three days. The instant petition was accompanied by a chart showing patentee's calculation of the patent term adjustment. Patentees' chart increases the reduction to the patent term adjustment by periods of 7 days and 65 days. A review of the prosecution history does not reveal that entry of either period of reduction to the patent term adjustment is warranted.

Patentees are reminded that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). An appeal to the Board of Patent Appeals and Interferences commences with the filing of a notice of appeal. See 35 U.S.C. 134(a). Generally, an appeal to the Board of Patent Appeals and Interferences ends with either 1) a Board decision, 2) the examiner reopening prosecution and issuing another Office action, or 3) the applicant filing a request to withdraw the appeal and reopen prosecution (e.g. the filing of a request for continued examination). In this instance the period consumed by appellate review is 154 days, beginning on January 28, 2010, the date of filing of the notice of appeal and ending on June 30, 2010, the subsequent date of the mailing of a notice of allowance. Thus, B delay is 586 (740 - 154) days.

Accordingly, the patent term adjustment is 763 days (189 days of A delay + 586 days of B delay – 0 days of overlap - 12 days of applicant delay). In view thereof, the patent term adjustment of 763 days indicated in the patent is correct.

It is noted that the Office issued a Notice of proposed rulemaking entitled *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review and Information Disclosure Statements*, 76 FR 18990 (April 6, 2011). To the extent that the final rule on *Revision of Patent Term Extension and Adjustment Provisions Relating to Appellate Review* revises the interpretation of appellate review applied in this decision, Patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the date of the final rule to file a request for reconsideration. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office is in receipt of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Further correspondence with respect to this decision should be addressed as follows:

By Mail: Mail Stop Petition
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By FAX: (571) 273-8300
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Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

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